UNITED NATIONS

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 759

Case No. 818: SHEHABI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, Vice-President, presiding; Mr. Francis Spain; Ms. Deborah Taylor Ashford;

Whereas, on 30 October 1994, Ali Sa'id Shehabi, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), hereinafter referred to as "the Agency", filed an application requesting the Tribunal, inter alia:

"[To order:]

a. Payment of salaries and other benefits including interest for the period from the detention of Applicant from his school while on duty until the date of his resumption of duty, plus consequent seniority in grade.

b. Payment of compensation to be assessed by the ... Tribunal for the delinquency of Respondent in meeting his obligation ... [to the Applicant] ... during the period of detention.

c. Payment of secretarial and legal fees estimated at US$2,000.-"

Whereas the Respondent filed his answer on 18 March 1996;

Whereas the Applicant filed written observations on 17 April 1996;

Whereas, on 3 July 1996, the Tribunal put questions to the Respondent, to which he provided answers on 5 and 10 July 1996, and on which the Applicant submitted comments on 7 and 13 July 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 17 October 1977, as an area staff member, serving as a Teacher at the Grade 6 level, on a temporary assistance basis, in the Syrian Arab Republic (SAR). He served thereafter on a temporary basis until 23 February 1980, when he was granted a temporary indefinite appointment as a Teacher at the Grade 8 level. His appointment was terminated with effect from 29 September 1982, on grounds of "non-availability".

On 31 March 1982, the Applicant was arrested while teaching his class. In a Note Verbale dated 8 May 1982, UNRWA informed the Syrian Ministry of Foreign Affairs that, "according to information available", the Applicant had been "apprehended in Agency's premises on or about 31.3.1982 while he was performing his duties as Teacher ..." The communication made reference to the provision of the Convention on the Privileges and Immunities of the United Nations that "the Premises of the United Nations shall be inviolable," and requested the reasons for the detention of its employee. A further Note Verbale was sent by UNRWA to the Ministry of Foreign Affairs on 18 January 1983, noting that no response had been received to its communication of 8 May 1982 regarding the Applicant and again requesting information. No response was received to these communications.

In the meantime, in a letter dated 2 November 1982, the Deputy Director of UNRWA Affairs and Field Administration Officer, SAR, advised the Applicant as follows:

> "... I have to inform you that on the basis of information that your absence from duty since 31 March 1982 is due to detention by the local authorities, and that so far [you have] failed to return to work or show up although a period of six months has passed since the date of your detention, it has been decided to terminate your appointment with the Agency on grounds of non-availability for service,

as from close of business on 29 September 1982, under the Provisions of Staff Regulation 9.1 and 9.3(b)."

He informed the Applicant that he would be paid salary in lieu of thirty days notice, and that his absence would be considered as special leave with full pay, from 31 March to 29 April 1982, as annual leave from 30 April to 9 May 1982, and as special leave without pay from 10 May to 29 September 1982.

On 3 November 1982, the Applicant's wife requested certification from UNRWA that the Applicant's services had been terminated. In a memorandum dated 18 November 1982, the Applicant requested from UNRWA that he be provided "with a statement of service, noting that my services were terminated on 30 September 1982". In a statement dated 21 May 1983, witnessed by the custodian of the Sheikh Hassan Prison, the Applicant authorized his wife "to receive from UNRWA all my salaries and compensations whatsoever and to sign the receipt of payment and the discharge in this respect". On 20 July 1983, UNRWA paid the Applicant's separation benefits to his wife.

The Applicant was detained without charges for almost ten years. On 14 August 1991, UNRWA again inquired as to the reasons for his detention, and requested that arrangements be made for the Director of UNRWA Affairs to visit him, as well as two other detained staff members. No response was received to the communication. The Applicant was released on 15 December 1991.

Following his release, on 25 January 1992, the Applicant applied to the Director of UNRWA Affairs for reinstatement, explaining that he had been arrested "for political reasons" while on duty and that he "was not convicted". On 16 February 1992, the Applicant provided UNRWA with a statement regarding his detention.

On 17 May 1992, the Applicant was reappointed as a Teacher at the Grade 8 level.

On 3 November 1992, the Applicant requested that he be considered as having been employed during his detention, and that he be paid his salary and granted the seniority he would have accrued

during those years. In a letter dated 17 November 1992, the Field Administration Officer, SAR, informed the Applicant that his letter of 3 November 1992 had been forwarded to UNRWA Headquarters. On 16 February 1994, the Applicant wrote to the Director of UNRWA Affairs, SAR, noting that since his request had been forwarded to UNRWA Headquarters, "... I kept asking about the answer, to which I was told it was not received yet." He stated that "two weeks ago the Field Administration Officer referred me to the Legal Counsel of the Agency. I was astonished to learn from him that I am not entitled to any salaries etc. ... during my detention." He further stated that the Agency had made payment of his separation benefits "to persons who are not lawfully entitled, and without my authorization". He requested that these amounts be restored to his Provident Fund account.

On 16 March 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 22 July 1994, the JAB adopted its report. Its evaluation, judgement and recommendation read, in part, as follows:

> "...
>
> (c) ... The Board also noted that the lapse of time before the appeal was filed, massively exceeds the time limits prescribed by Area Staff Rule 111.3.
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> (d) Furthermore, the Board also took note of the Agency's policy on Detention of Locally Recruited Employees in the Host Countries as set out in the letter of Chief, Personnel and Administration Division dated 19 December 1972 and resolved that it was fully observed in the Appellant's case; and that the Appellant's Provident Fund benefits were rightly paid to the Appellant's wife based on a letter of authorization signed by the Appellant on 21 May 1983 and witnessed by Sergeant Mohammed Al-Hassan, Custodian of Sheikh Hassan Prison and by the Head of the Investigation Branch.

IV. Recommendation

17. In view of the foregoing, and without prejudice to any further oral or written submissions to any party the Appellant may deem pertinent, the Board unanimously makes its recommendation that the appeal be rejected."

On 19 August 1994, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"I note that the Board found that, at the material time, the administrative decisions appealed against did not give rise to rights of appeal under the version of Area Staff Regulation 11.1(A) which was then in effect. The Board also noted that the lapse of time before your appeal was filed greatly exceeded the time-limits prescribed by Area Staff Rule 111.3.

The Board also took note of the Agency's policy on Detention of Locally-Recruited Employees in the Host Countries as set out in the letter of Chief, Personnel and Administration Division dated 19 December 1972, and resolved that it was fully observed in your case. Finally, the Board found that your Provident Fund benefits were correctly paid to your wife, based on a letter of authorization which you signed on 21 May 1983 and which was witnessed by custodial and police officials of the Syrian Government.

Based on the foregoing, the Board unanimously made its recommendation that your appeal be rejected. I accept the recommendation of the Board, and accordingly, your appeal stands rejected."

On 30 October 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision to terminate the Applicant's employment while he was in detention was inconsistent with Area Staff Rules and legitimizes the illegal arrest of the Applicant on UN premises by Syrian authorities.

2. The decision to terminate the Applicant's services was discriminatory in that it denied the Applicant the immunity enjoyed by international staff members. The policy, in respect of Area

staff, relied on by the Respondent is null and void because it violates the UN Charter and the Universal Declaration of Human Rights.

3. Under Syrian law, a worker who is reinstated to duty, after being detained, is entitled to full salary for the period of detention, if he was not convicted.

Whereas the Respondent's principal contentions are:

1. The Applicant's claim is time-barred. The JAB refused to waive the time limits, and there are no exceptional circumstances to justify such a waiver. The appeal is therefore not receivable.

2. The Administration's decision to terminate the Applicant's services was correctly taken, in accordance with its stated policy.

The Tribunal, having deliberated from 3 to 26 July 1996, now pronounces the following judgement:

I. The unfortunate Applicant spent almost ten years in prison without charge or trial.

Having been released on 15 December 1991, the Applicant did not seek a review of the decision to terminate his services until 3 November 1992. He had, by that time, been reinstated as a Teacher at the grade held by him at the time of his arrest. His appeal to the Joint Appeals Board (JAB) was not brought until 16 March 1994.

II. The JAB did not make a finding on the delay in filing the appeal. Rather, it based its recommendation on a finding that the administrative decision in question did not give rise to a right of appeal under the Area Staff Regulations in effect at the material time. The Tribunal has already rejected this argument in its Judgement No. 650, Bakr et al vs. UNRWA (1994). The JAB did note that the lapse of time "massively" exceeded the time limits prescribed by Area Staff Rule 111.3. From the use of the term

"massively", it would appear that the JAB included the time which the Applicant spent in prison. In this regard, it should be noted that the Respondent readily concedes that the Applicant was not in a position to challenge the administrative decision to terminate his services while he was in detention.

III. The Respondent submits that the Applicant was obliged to challenge the decision expeditiously on his release. The Applicant did not seek administrative review of the decision to terminate his services for some ten months after his release and he did not appeal to the Joint Appeals Board until 16 March 1994, 16 months later.

In normal circumstances, these would be regarded as unusually long periods of time in which to fail to comply with the relevant rules. This case cannot be regarded as normal. The Applicant had been subjected to the cruel and horrific experience of being incarcerated without charge or trial for ten years. It is not difficult to understand that a long period of readjustment to the outside world would be required before the released person would begin to come to terms with the ordinary requirements of everyday life. Even greater effort on the released person's part would be required to deal with unusual matters, as in this case, the preparation of a legal challenge to his employers. If ever there was a case in which there were exceptional circumstances which would justify the waiving of specified time limits, in accordance with Area Staff Rule 111.3, this surely is it.

IV. At the time of the Applicant's arrest, certain procedures were in force regarding the arrest and detention of staff members by the authorities of the host country. Field Office Directors were required to make prompt enquiries of the authorities concerned as to the reasons for the arrest or detention of the staff member and the nature of such charge, if any, as was brought. Field Office Directors had also been instructed to attempt to obtain timely, official information in such cases, having regard to the rights and duties of the staff member flowing from the United Nations Charter,

the 1946 Convention on the Privileges and Immunities of the United Nations and the Agency's Area Staff Regulations and Rules.

In 1980, it was noted that the Agency had difficulties in obtaining appropriate cooperation from governmental authorities.

V. Following the Applicant's arrest on 31 March 1982, on 8 May 1982, the Agency addressed a Note Verbale to the Ministry of Foreign Affairs of the Syrian Arab Republic, stating that information had been received that the Applicant had been apprehended. There was no response.

On 18 January 1983, the Agency sent another Note Verbale to the Ministry seeking the grounds of arrest and detention. Again there was no response.

On 14 August 1991, the Agency sent a further Note Verbale to the Ministry enquiring about the reasons for the detention of three staff members, including the Applicant. There was no response.

From 1982 to 1991, in each of the Secretary-General's Annual Reports to the General Assembly on "Respect for the Privileges and Immunities of Officials of the United Nations and the Specialized Agencies and Related Organizations", the Applicant was named as a person who was in detention in the Syrian Arab Republic without charge or trial.

VI. In Judgement No. 579, Tarjouman, paragraph IV, (1992), the Tribunal stated that "in so serious a matter as the detention of a staff member, the Organization had a duty, at the very least, to persist in efforts to obtain pertinent information". It also stated that "it is difficult to visualize matters of greater importance and concern to staff members, and to the Organization which depends upon them for faithful and efficient performance of their duties, than the expectation by the staff that the Organization will insist on respect for the staff's functional immunity under the 1946 Convention on the Privileges and Immunities of the United Nations. Staff must be able to rely on efforts by the Organization to assure their protection against arbitrary arrest and detention and on

assistance to staff members subjected to it." (Paragraph X). Finally, the Tribunal emphasized the ongoing need for vigilance and aggressive action to protect and defend staff rights in this area.

VII. The sending of three Notes Verbales, over a period of detention lasting ten years, scarcely complies with these stated standards. The first Note Verbale was sent more than a month after the Applicant was arrested on the premises of the United Nations. The second Note Verbale was sent eight months later. The third Note Verbale was sent more than eight years later. The efforts made can only be described as utterly inadequate. The Agency should have been much more energetic in such a serious matter. It should have pressed the authorities with enquiries and personal visits in an effort to obtain information as to the Applicant's whereabouts and the reasons for his detention.

In this regard, the Agency failed to follow the terms of its own policy and failed the Applicant in his time of greatest need.

VIII. The Tribunal notes that in 1984, a more detailed policy was adopted by the Respondent in respect of staff members who are detained. This policy provides that the staff member shall be placed on special leave with full pay for a year. If within the period of one year the Agency cannot obtain adequate information as to the reasons for the staff member's detention, the Commissioner General may continue the staff member's pay protection. The policy states that, unless there is at least some prima facie evidence of wrongdoing on the part of the staff member, such pay protection should continue.

IX. The Tribunal notes that the policy in force when the Applicant was detained only provided for a six-month period of pay protection. With regard to the Applicant's separation from service, the Tribunal finds that the Respondent acted in accordance with the policy in force. However, the Respondent failed to act in accordance with the policy with regard to attempting to obtain

information as to the reasons for the Applicant's detention. As the Applicant was held in detention without charge, and as there was no prima facie evidence of wrongdoing, the Tribunal finds this failure to be culpable.

X. For the foregoing reasons, the Tribunal orders the Respondent to pay the Applicant, as compensation, the amount of US$7,500.

All other pleas, including the request for costs, are rejected.

(Signatures)

Hubert THIERRY
Vice-President, presiding

Francis SPAIN
Member

Deborah Taylor ASHFORD
Member

Geneva, 26 July 1996

R. Maria VICIEN-MILBURN
Executive Secretary